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**GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS**

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**DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT****NO. R. 2****19 FEBRUARY 2016****RULES BOARD FOR COURTS OF LAW ACT, 1985 (ACT NO. 107 OF 1985)****AMENDMENT OF RULES REGULATING THE CONDUCT OF THE PROCEEDINGS  
OF THE MAGISTRATES' COURTS OF SOUTH AFRICA**

The Rules Board for Courts of Law has, under section 6 of the Rules Board for Courts of Law Act, 1985 (Act No. 107 of 1985), with the approval of the Minister of Justice and Correctional Services, made the rules in the Schedule.

**SCHEDULE****GENERAL EXPLANATORY NOTE:**

[ ] Words or expressions in bold type in square brackets indicate omissions from existing rules.

Words or expressions underlined with a solid line indicate insertions in existing rules.

**Definition**

1. In this schedule "the Rules" means the Rules Regulating the Conduct of the Proceedings of the Magistrates' Courts of South Africa published under Government Notice No. R. 740 of 23 August 2010, as amended by Government Notice Nos. R. 1222 of 24 December 2010, R. 611 of 29 July 2011, R. 1085 of 30 December 2011, R. 685 of 31 August 2012, R. 115 of 15 February 2013, R. 263 of 12 April 2013, R. 760 of 11 October 2013, R. 183 of 18 March 2014, R. 215 of 28 March 2014 and R. 507 of 27 June 2014, R. 5 of 9 January 2015, R. 32 of 23 January 2015, R. 33 of 23 January 2015, R. 318 of 17 April 2015 and R. 545 of 30 June 2015.

**Amendment of rule 12 of the Rules**

2. Rule 12 of the Rules is hereby amended –

(a) by the substitution for sub-rule (1), of the following sub-rule:

“(1)(a) If a defendant has failed to deliver the notice of intention to defend within the time stated in the summons or before the lodgement of the request provided for in this paragraph, and has not consented to judgment, the plaintiff may lodge with the registrar or clerk of the court a request in writing similar to Form 5 of Annexure 1, in duplicate, together with the original summons and the return of service, for judgment against such defendant for-

- (i) any sum not exceeding the sum claimed in the summons or for other relief so claimed;
- (ii) the costs of the action; and
- (iii) interest at the rate specified in the summons to the date of payment or, if no rate is specified, at the rate prescribed under section 1(2) of the Prescribed Rate of Interest Act, 1975 (Act No. 55 of 1975).

“(b) When the defendant has been barred in terms of rule 21B(3) from delivering a plea, the plaintiff may lodge with the registrar or clerk of the court a request in writing for judgment in the same manner as when the defendant has failed to deliver the notice of intention to defend.”.

(c) When the defendant has failed to deliver the notice of intention to defend or, having delivered such notice, has **[failed to deliver a plea within the period specified in the notice delivered to him or her in terms of paragraph (b)]** been barred in terms of rule 21B(3) from delivering a plea and the plaintiff has in either case lodged a request for judgment, the registrar or clerk of the court shall process the request in terms of the provisions of sub-rules (2), (3), (4), (5), (6), (6A) and (7), and notify the plaintiff of the outcome of

the request by returning the duplicate copy duly endorsed as to the result and the date thereof.

(d) When a defendant has delivered the notice of intention to defend but has **[failed to deliver a plea within the period specified in the notice delivered to him or her in terms of paragraph (b)]** been barred in terms of rule 21B(3) from delivering a plea and the registrar or clerk of the court has entered judgment in terms of a request lodged by the plaintiff, costs shall be taxed as if it had been a defended action.

(e) If the original summons cannot be filed together with the request for judgment as required by paragraph (a), the plaintiff may-

- (i) file with the registrar or clerk of the court a copy or duplicate original of the summons and a copy of the signed return of service received from the sheriff; and
- (ii) file an affidavit together with the documents mentioned in subparagraph (i) stating the reasons why the original summons and return of service cannot be filed: Provided that in divorce actions or actions for nullity of marriage rule 22(5) shall apply.”;

(b) by the substitution for sub-rule (2), of the following sub-rule:

“(2) (a) If it appears to the registrar or clerk of the court that the defendant intends to defend the action but that his or her notice of intention to defend is defective, in that the notice-

- (i) has not been properly delivered; or
- (ii) has not been properly signed; or
- (iii) does not set out the postal address of the person signing it or an address for service as provided in rule 13; or
- (iv) exhibits any two or more of such defects or any other defect of form,

he or she **[shall] must** not enter judgment against the defendant unless the plaintiff has delivered notice in writing to the defendant calling upon him or her

to deliver [a] the notice of intention to defend in due form within 5 days of the receipt of such notice.

(b) The notice provided for in sub-rule (2)(a) [shall] must set out in what respect the defendant's notice of intention to defend is defective.

(c) On failure of the defendant to deliver [a] the notice of intention to defend as provided in paragraph (a), the plaintiff may lodge with the registrar or clerk of the court a written request for judgment in default of due notice of intention to defend: Provided that in divorce actions or actions for nullity of marriage rule 22(5) shall apply.”;

(c) by the substitution for sub-rule (3), of the following sub-rule:

“(3) Judgment in default of [appearance] the notice of intention to defend [shall] must not be entered in an action in which the summons has been served by registered post unless the acknowledgement of receipt referred to in rule 9(13)(a) has been filed by the sheriff with his or her return of service.”;

(d) by the substitution for sub-rule (3A), of the following sub-rule:

“(3A) When a claim is for a debt or liquidated amount in money and the defendant has failed to deliver the notice of intention to defend or, having delivered the notice of intention to defend, has failed to deliver a plea within the period specified in the notice delivered in terms of [sub-rule (1)(b)(i)] rule 21B(2) and the plaintiff has in either case lodged a request for judgment, the registrar or clerk of the court may, subject to the provisions of sub-rules (2), (4), (5), (6) and (6A) grant judgment or refer the matter to the court in terms of sub-rule (7).”;

(e) by the substitution for sub-rule (5), of the following sub-rule:

“(5) The registrar or clerk of the court [shall] must refer to the court any request for judgment on a claim founded on any cause of action arising out of or

based on an agreement governed by the National Credit Act, 2005 or the Credit Agreements Act, 1980 (Act No. 75 of 1980), and the court shall thereupon make such order or give such judgment as it may deem fit.”.

#### **Amendment of rule 15 of the Rules**

3. Rule 15 of the Rules is hereby amended –

(a) by the deletion of sub-rule (4); and

(b) by the substitution of sub-rule (5) of the following sub-rule:

“(5) Where a plaintiff has been barred in terms of rule 21B(3) from delivering a declaration, the defendant may set the action down for hearing upon not less than 10 days’ notice to the defaulting plaintiff, and apply for absolution from the instance or, after adducing evidence, for judgment, and the court may make such order thereon as it deems fit.”.

#### **Substitution of rule 21B of the Rules**

4. The following rule is hereby substituted for rule 21B of the Rules:

##### **“Failure to deliver pleadings - barring**

21B.(1) Any party who fails to deliver a replication or subsequent pleading within the time stated in rule 21 shall be automatically barred.

(2) If any party fails to deliver any other pleading within the time laid down in these rules or within any extended time allowed in terms thereof, any other party may deliver a notice in writing calling upon that party to deliver such pleading within five days of receipt of such notice.

(3) Any party failing to deliver the pleading referred to in the notice mentioned in sub-rule (2) within the time therein required or within such further period as

may be agreed between the parties, shall be in default of filing such pleading and automatically barred: Provided that for the purposes of this rule the days from 16 December to 15 January, both inclusive, shall not be counted in the time allowed for the delivery of any pleading."

#### **Amendment of rule 22 of the Rules**

5. Rule 22 of the Rules is hereby amended –

(a) by the substitution for sub-rule (2) of the following sub-rule:

"(2) The delivery of notice of trial shall [*ipso facto*] automatically operate to set down for trial at the same time any claim in reconvention made by the defendant.";

(b) by the substitution for sub-rule (5) of the following sub-rule:

"(5) In divorce actions or actions for nullity of marriage, notwithstanding anything in this rule contained, the registrar of the court shall at the written request of the plaintiff set the action down for hearing at the time and place and on a date to be fixed by the registrar of the court, if the defendant has-

- (a) failed to deliver the notice of intention to defend; or
- (b) failed to deliver a plea after receiving a notice in terms of rule [12(1)(b)] 21B(2); or
- (c) given written notice to the plaintiff and the registrar or clerk of the court that he or she does not intend defending the action, but no notice of such request or set down need be served on the defendant."

#### **Amendment of Annexure 2 to the Rules**

6. Table A of Annexure 2 to the Rules is hereby amended by the substitution for Part III of the part contained in the Annexure to this Schedule.

**Commencement**

7. These rules come into operation on **22 March 2016**.

**ANNEXURE****"TABLE A****COSTS****PART III****DEFENDED ACTIONS (AND INTERPLEADER PROCEEDINGS)**

<b>Item</b>	<b>Scale A R</b>	<b>Scale B R</b>	<b>Scale C R</b>	<b>Scale D R</b>
1 Instructions to sue or defend or to counterclaim or defend a counterclaim, perusal of all documentation and consideration of merits and all necessary consultations to issue summons	R487,00	R647,50	R778,00	R1011,50
2 Summons	R244,50	R340,00	R406,50	R528,00
2A Particulars of Claim or Declaration	R244,50	R340,00	R406,50	R528,00
3 Appearance	R41,00	R41,00	R49,50	R64,00
4 Notice under rules [12(1)(b) and (2)] 12(2) and 21B(2)	R41,00	R41,00	R49,50	R64,00
5 Plea	R244,00	R340,00	R406,50	R528,00
6 Claim in reconvention	R244,00	R340,00	R406,50	R528,00
7 Reply, if necessary	R244,00	R340,00	R406,50	R528,00
8 Drawing up of all documents not specifically mentioned, including request for further particulars, schedule of documents, all affidavits, subpoenas, any notice not otherwise provided for and drawing up of statements by witnesses	-	-	-	-
9 Production of documents for inspection, or inspecting documents, per quarter of an hour or part thereof of the time spent	R144,50	R144,50	R182,50	R235,50
10 Each copy of service, per page	R3,50	R3,50	R3,50	R3,50
11 The recording of statements by witnesses, per quarter of an hour or	R144,50	R144,50	R182,50	



part thereof				R235,50
12 Notice of trial or reinstatement	R41,00	R41,00	R49,50	R64,00
13 Preparing for trial (if counsel not employed)	R810,00	R1 102,00	R1 322,00	R1 719,00
14 Attendance at settlement negotiations, for each quarter of an hour or part thereof actually spent in such negotiations	R144,50	R144,50	R182,50	R235,00
15 Attending court during trial, or at an on-the-spot inspection, or at postponement or examination on commission, for each quarter of an hour or part thereof spent in court while the case is actually being heard-				
(a) if counsel not employed	R144,50	R144,50	R182,50	R235,50
(b) if counsel employed	Nil	R58,50	R70,00	R91,00
16 Attending pre-trial conference, for each quarter of an hour or part thereof actually spent in such conference	R144,50	R144,50	R182,50	R235,50
17 Attending court to hear reserved judgment, per quarter of an hour or part thereof	R28,50	R28,50	R35,00	R45,50
18 Correspondence-				
(a) for each necessary letter or telegram, per folio	R23,50	R23,50	R28,50	R37,00
(b) for each letter or telegram received, provided that a fee for perusal shall not be allowed in addition to the fee herein provided for	R15,00	R23,50	R28,50	R37,00
19 Attendances: For each necessary attendance not otherwise provided for, per attendance	R15,00	R23,50	R28,50	R37,00
20 Necessary formal telephone calls, per call	R15,00	R23,50	R28,50	R37,00
21 Telephone consultations: For every 5 minutes or part thereof, subject to a maximum fee per consultation of R140,00 for Scales A to C and R 181,00 for Scale D	R41,00	R41,00	R49,50	R64,00
22 Each necessary consultation, per quarter of an hour or part thereof	R144,50	R144,50	R182,50	R235,50



23 The court may, on request made at the hearing, allow in addition to the fee prescribed in item 13 above a refresher fee in postponed or partly heard trials	R504,00	R713,50	R856,00	R112,00
24 Time spent waiting at court (owing to no court being available) per quarter of an hour or part thereof	R97,50	R97,50	R117,50	R153,00
25 Travelling time [subject to the provisions of rule 33(9)] per quarter of an hour or part thereof	R97,50	R97,50	R117,50	R153,00
26 Subsistence and travelling expenses as laid down in rule 33(9)	The actual reasonable subsistence and travelling expenses as laid down in rule 33(9)			